



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

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March 13, 1992

Michael E. McNichols
Clements, Brown & McNichols
13th and Idaho Streets
Lewiston, Idaho 83501Grace Koh Angelos
Jenner & Block
1 IBM Plaza
Chicago, Illinois 60611

Re: Avery Landing

Dear Mike and Grace:

I have enclosed a letter we received from Mr. Zotter with the Federal Highway Administration. Although the Department acknowledges that whether sovereign immunity has been waived is arguable, the Department strenuously objects to Mr. Zotter's application of the state Water Quality Standards. It is the Department's position that petroleum products are continuously being released or discharged from the soils to the ground water, and via ground water seeps to the St. Joe River. Thus, there is a continuing violation of the Water Quality Standards prohibition against the discharge or release of pollutants and a continuing obligation to respond to the release or discharge in a manner provided for in IDAPA § 16.01.02850. This is particularly true with respect to Potlatch's property because the petroleum products are seeping directly from the property to the St. Joe River. A common law nuisance theory also provides authority for the abatement of this continuing release or discharge.

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Coeur d'Alene File

Michael E. McNichols
Grace Koh Angelos
Page 2
March 13, 1992

The Department intends to resolve this matter with a Consent Order that incorporates the remediation method previously agreed to between the parties. Please let me know whether Potlatch and CMC will cooperate with the state to clean up this property.

Yours very truly,

A handwritten signature in black ink, appearing to read "Douglas M. Conde". The signature is fluid and cursive, with a large initial "D" and "C".

Douglas M. Conde
Deputy Attorney General

DMC/lvh
Enclosure
cc: Joe Nagel
Lisa Prochnow